

STGWG

State and Tribal Government Working Group

Coordinated by the National Conference of State Legislatures through a
Cooperative Agreement with the U.S. Department of Energy
1560 Broadway, Suite 700, Denver, Colorado 80202, (303) 830-2200

December 15, 2000
(Transmitted electronically)

Steven Livingstone, Special Assistant for
Long-Term Stewardship
Office of Environmental Management
U. S. Department of Energy (EM-51)
1000 Independence Ave., SW
Washington, DC 20585

Comments on the Draft Long-Term Stewardship Study, October 2000

Dear Mr. Livingstone:

The State and Tribal Government Working Group (STGWG) appreciates the opportunity to comment on the Draft Long-Term Stewardship Study dated October 2000. STGWG congratulates the DOE on the quality and responsiveness of this document. The document is well structured, well written and very readable. The efforts that have obviously gone into responding to the scoping comments are apparent and are appreciated. The report sets a standard that subsequent DOE reports should strive to emulate.

The report emphasizes in several places the public processes for addressing long-term stewardship issues, and STGWG concurs with the importance of this concept. **Indeed, the report should go farther in specifying the advantage to DOE in involvement beyond strict regulatory requirements.** According to the DOE Openness Advisory Panel (draft report, 11/12/00), DOE's success in fulfilling their mission is dependent upon their relations with the local community, and "each site must tailor its approach to reconcile the nature of its mission with the makeup and interests of its own community." Particularly in the long-term stewardship arena, where success is defined in community terms, not DOE's, the need to meaningfully involve local and regional stakeholders is paramount. While laws and regulations specify limited community involvement in remedy decisions, the DOE needs to go beyond these minimal requirements to achieve

S. Livingstone
Dec. 15, 2000

active support for their decisions with long-term implications, or recognize that the lack of this support undermines the effectiveness of the remedy. **Of particular importance is the need for inclusivity regarding tribal nations and local governments. In these communications, DOE needs to acknowledge the special government-to-government nature of interactions with sovereign Tribes.**

While the report discusses the need for enforceability of the requirements of long-term stewardship, no solutions are offered. **STGWG remains skeptical of the effectiveness of self-regulation and asks that DOE investigate what is required to establish external regulation of stewardship requirements.** ROD modifications and five-year reviews under CERCLA are performed by the DOE and do not require state (or community) acceptance. The need for openness and involvement described above must go hand-in-hand with external enforceability in order to create an acceptable and effective long-term stewardship program.

The report discusses the need for determining likely future site use in order to define remedy objectives. This is a logical approach to remedy development, but the approach must also incorporate the ability of a remedy to achieve unrestricted use through the treatment or removal of contamination. Unrestricted use is the goal of cleanup. Wherever unrestricted use is not achieved, long-term stewardship is required. **The report should more formally identify that the driver for long-term stewardship is whether unrestricted use is achieved by a remedy.**

The report presents a relatively comprehensive discussion of cost and funding for long-term stewardship. However, two issues emerge as requiring resolution before the implementability of long-term stewardship can be determined: estimation of long-term costs and assurance of funding. Current cost estimating techniques fail to provide a basis for the comparison of near-term costs with long-term costs. Even the NDAA Report to Congress truncated costs at 70 years in the future, clearly demonstrating the need for new methodology to properly account for costs lasting hundreds of years or more. **The report needs to stress this research need, and concur that remedy comparison in the absence of this information is incomplete.**

Neither the DOE nor any other federal agency can commit to future funding for long-term stewardship. Thus, assurances that long-term requirements will be funded are without substance and cast doubt on the permanence of any remedy with critical long-term attributes. **The report should address this uncertainty and specify reevaluation of selected remedies and continued funding on an ongoing basis, not just on the CERCLA five-year interval.** This issue ties to the external enforceability of long-term requirements discussed above.

S. Livingstone
Dec. 15, 2000

Page three

While the report does address the roles of other parties in long-term stewardship, it does not directly address what role, if any, the DOE should have. For sites (or portions of sites) with no continuing DOE mission, it is unlikely that DOE will manage the property over the long term. Even where residual contamination or land disposal exists, there is no compelling reason for DOE to continue management, if other agencies are better suited to these tasks. Most federal agencies have ownership of contaminated sites requiring long-term management, and it is likely that a central long-term stewardship agency could do a better job of managing these sites and obtaining funding to ensure that long-term requirements are met. Such a centralized agency could possibly be more effective in managing information for these sites, as well as directing research into technologies that would improve the implemented remedies. **The report needs to raise this question of the DOE's role in long-term stewardship in order to allow airing of the issue and to promote conscious decision making for continued DOE management.**

We believe that this report has significant value both within DOE and externally. Should you have any questions regarding these comments, please contact me at 303-692-3423.

We encourage you to finalize this document in a timely manner to avoid the interruptions that can delay projects during the transition of an administration.

Sincerely,

(signature on hard copy to follow)

Steve Tarlton, Chair
STGWG Stewardship Committee
State of Colorado

cc: Armand Minthorn, STGWG Co-Convenor
Tom Winston, STGWG Co-Convenor
STGWG Stewardship Committee
James Werner, DOE
Martha Crosland, DOE
Catherine Volk, DOE
Ann Beauchesne, NGA